

POLICY

for

CONSIDERING APPLICATIONS TO MINE IN STATE OWNED LAND BELOW
MEAN HIGH WATER IN THE NORTH AND MIDDLE FORKS FORTY-MILE RIVER
UPSTREAM FROM THE KINK

and for

APPROVAL OF LONG-TERM CAMPING IN SUPPORT OF MINING OPERATIONS ON STATE
LAND BELOW MEAN HIGH WATER
ADJOINING THE FORTY-MILE NATIONAL WILD AND SCENIC RIVER

by the

DEPARTMENT OF NATURAL RESOURCES,
DIVISION OF MINING AND WATER MANAGEMENT

and the

FORTY-MILE MINERS ASSOCIATION

November 1998

Purpose:

The purpose of this policy is to implement the Resolution of the Bureau of Land Management-Alaska Resource Advisory Council (RAC) passed September 22, 1998 to resolve issues associated with the lack of any long-term campsites on federal lands adjoining the North Fork Forty-mile River downstream from the Kink. The RAC Resolution provides for:

- Upland camping only on that 21 mile segment of the North Fork of the Forty-mile River between the Kink and the confluence with the South Fork of the Forty-mile River. *(Existing camps in the remainder of the Forty-mile National Wild and Scenic River are unaffected by this Resolution, except for Point 1 of the May 7, 1998 document referenced below.)*
- Being in effect through a period of 180 days following agreement by the Bureau of Land Management (BLM) and the State of Alaska that another wild segment of the Forty-mile River above the Kink is navigable—and then it will be renewed, revised, or terminated.
- Being "...contingent upon—and does not take effect until—the miners are allowed access to upland camps on the 21-mile segment and the State is simultaneously ready to treat any mining claims above the Kink as 'State Selected'."

The RAC Resolution also references a 15-point agreement (dated May 7, 1998) drafted by the Forty-mile Work Group that included the Division of Mining and Water Management and the Forty-mile Miners Association and other user groups. Points in the May 7, 1998 agreement pertinent to this policy are summarized as follows:

- Point 1 -- The State will not authorize long-term gravel bar or floating camps in support of mining operations where BLM authorizes upland camps for mining. *(Note--This specific provision is the only one agreed to by the Work Group that applies to the entire Forty-mile National Wild and Scenic River.)*

- Point 9 -- Suction dredges will be limited to intake nozzles that are 10 inches or smaller in the North Fork.
- Point 7 -- Annual joint state and federal inspections of mining operations will be conducted with invitations to mining and recreational interests to participate.
- Point 11 -- The Work Group agreement is a basis for a cooperative management agreement for the Fortymile river System between the BLM and the State of Alaska, in cooperation with the Fortymile Miners Association, the Fairbanks Paddlers, and other user groups, for the effective management of camping in support of mining operations.

Background:

The Alaska National Interest Conservation Land Act (ANILCA) Sections 603 and 605 designated parts of the Fortymile River a component of the National Wild and Scenic Rivers System to be administered by the BLM. The North Fork and Middle Fork to Joseph were designated as "wild river areas." The BLM in 1983 issued a navigability determination that the North Fork Fortymile River is navigable only downstream from the Kink, a distance of about 21 miles, to its confluence with the South Fork. The Department of Natural Resources (DNR) in 1992 issued a navigability report concluding that the North Fork and Middle Fork to Joseph were navigable. Because there is no disagreement between BLM and DNR the lower of 21 miles of the North Fork Fortymile River has been in the exclusive ownership of State of Alaska since the Alaska Statehood Act. The 1983 navigability determination between Joseph and the Kink by BLM pre-dates the Gulkana Decision (A80-359 CIV, 1987), which established supplemental navigability criteria for water bodies in Alaska.

A series of placer mining operations using floating suction dredges are located in the lower 21 miles of the North Fork Fortymile River. The BLM does not allow long-term commercial camping on Federal uplands designed as a "wild river area." Accordingly, long-term floating and river bar camps below mean high water have been approved by the DNR Division of Mining and Water management (DMWM) to facilitate valid mining operations on state ownerships below mean high water. As of November 1, 1998 there are no approved or pending applications to conduct mining operations below mean high water of the North Fork upstream from the Kink, or Middle Fork downstream from Joseph. There are no known state mining claims in either of these river areas.

Policy for Mining related activities on the North Fork and Middle Fork of the Fortymile River¹:

This policy does not waive the requirements of AS 38.05.210 (annual labor) or AS 38.05.211 (annual rental). Annual rental and an in-lieu fee for annual labor will be required to maintain rights to a state mining claim located on state land below mean high water on the Middle Fork Fortymile River downstream from Joseph to its confluence with the North Fork Fortymile and the North Fork Fortymile upstream from the Kink. These annual fees will continue until the BLM and the State of Alaska agree that the land associated with any such state mining claims is no longer in dispute.

The Division of Mining and Water Management (DMWM) agrees to:

1. Not approve, after the effective date of this policy, any mining operations below the mean high water of the Fortymile River segments of the North Fork upstream from the Kink and Middle Fork downstream from Joseph:
2. Not approve any suction dredge operation using an intake nozzle larger than ten inches in the 21-mile segment of the North Fork of the Fortymile River between the Kink and the confluence with the South Fork of the Fortymile River.
3. Not approve gravel bar or floating camps in support of mining operations in the vicinity of authorized long-term camps on Federal upland that support mining on state land below mean high water regardless of its location in the Fortymile River National Wild and Scenic Rivers System.

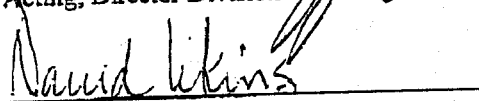
4. Schedule an annual joint BLM and DMWM trip to document the impacts of long-term camps on Federal lands approved by BLM and the impacts from approved mining operations on state land below mean high water adjoining the Fortymile National Wild and Scenic River. Representatives of the Fortymile Mining Association, Fairbanks Paddlers, and other interested groups will be informed of the trip schedule and invited to participate.

Effective Date:

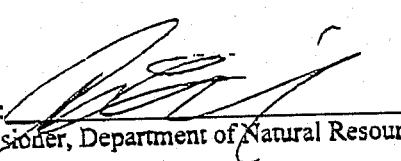
1. This policy is contingent upon – and shall not take effect – until miners are allowed access to 5 to 10 long-term camps on Federal uplands adjoining the lower 21-miles of the North Fork Fortymile River.
2. This policy shall remain in effect through a period of 180 days following agreement by the BLM and the State of Alaska that another wild segment of the Fortymile River above the Kink is navigable. If and when another wild segment of the Fortymile River above the Kink is determined to be navigable, this policy shall be subject to renewal, revision, or termination.


Robert Loeffler,
Acting, Director Division of Mining and Water Management

11/2/98
Date


David Likins
President, Fortymile Miners Association

October 23, 1998
Date

I concur: 
Commissioner, Department of Natural Resources

11/2/98
Date

¹ This policy shall not apply to any other water body where ownership and management of state land below mean high water that may be in dispute with an adjacent upland owner.